

December 26, 2006

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0600044**

ROBERT COUSINEAU
Code Enforcement Appeal

Location: 35430 – 252nd Avenue Southeast, Auburn

Appellant: Robert Cousineau
represented by **Charles Horner**, Attorney
1001 – 4th Avenue, Suite 3200
Seattle, Washington 98154
Telephone: (206) 381-8454

King County: Department of Development and Environmental Services,
represented by **Holly Sawin**
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
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SUMMARY OF DECISION/RECOMMENDATIONS:

Department's Preliminary Recommendation: Deny appeal; extend compliance schedule
Department's Final Recommendation: Dismiss charge 3; deny appeal; extend compliance schedule
Examiner's Decision: Dismiss charge 3; deny appeal in part; extend compliance schedule

EXAMINER PROCEEDINGS:

Hearing opened: October 2, 2006
Hearing closed: October 2, 2006

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. On July 26, 2006, the King County Department of Development and Environmental Services (DDES) issued a Notice and Order to Robert D. Cousineau that alleged code violations at property identified as 35430 – 252nd Avenue Southeast. The property is 2.7 acres in size and zoned RA-5. The Notice and Order cited Mr. Cousineau and the property with three violations of county code:
 - (a) Construction/remodel of a two-story residence with deck without the required permits, inspections and approvals, citing violated code sections, and also within an environmentally critical area and/or its buffer, also citing violated code sections.
 - (b) Clearing and/or grading within an environmentally critical area (aquatic) and in excess of 100 cubic yards and/or filling in excess of 3 feet in depth and/or excavating in excess of 5 feet in depth without the required permits and approvals, citing violated code sections.
 - (c) Accumulation of assorted rubbish, salvage and debris (including but not limited to) household goods, appliances, scrap metal, scrap wood, glass and plastic) throughout the premises of the residential site, citing violated code sections.

Such violations were required to be corrected by September 26, 2006 by a) complete application for and obtainment of the required building permits, inspections and approvals for the residential construction, or removal of the non-permitted construction work and demolition debris by the same date; b) complete application for and obtainment of a valid clearing-grading permit; and c) removal of the assorted rubbish, salvage and debris by that date.

2. Mr. Cousineau filed a timely appeal of the supplemental Notice and Order, which appeal made the following assertions:
 - (a) Mr. Cousineau is an innocent purchaser who is a victim of extenuating circumstances regarding the residential building permit issue, in that the real estate purchase and sale agreement under which he purchased the property contains misrepresentations regarding the permit status and regulatory compliance of the onsite sewage system and domestic well, neither of which were in fact properly permitted or in compliance. Mr. Cousineau is diligently attempting to resolve the permit status of the onsite sewage disposal system and domestic well, but requires additional time to obtain approval of the septic system and well, which is a prerequisite to application for the necessary building permit.
 - (b) None of the cited residential construction activity occurred within an environmentally critical area or its buffer or within 15 feet of such buffer.
 - (c) Mr. Cousineau suffered a heart attack at the time that a landscaping contractor and the contractor's employees were engaged in the alleged un-permitted grading activities and he was therefore incapable of supervising their work. Mr. Cousineau requests that he be permitted to apply for the appropriate permits and to restore the cleared area without penalty given his health problems and absence during the time of violation.

- (d) Mr. Cousineau stated that the cited rubbish, salvage and debris would be removed from the property by the compliance deadline, noting that the debris was left by the previous property owners, who are asserted to have breached their agreement under the real estate purchase and sale agreement to remove it.
3. DDES stipulated to the compliance of the property with the notice and order requirements for resolution of the rubbish, salvage and debris violation (violation charge 3).
 4. The residential construction at issue consists of the extensive rebuilding/remodeling and second-story addition of a long-existing residence. Mr. Cousineau has stipulated to the charges of violation of failing to obtain a building permit for the residential construction work, and is found to be an innocent purchaser who is acting in good faith to gain septic system and domestic well approval in order to obtain the required building permit. The evidence in the record does not support a finding that any substantial residential construction occurred within a critical area (a ditched intermittent stream) and/or required buffers or buffer setback areas. Two critical factors in such finding are that a) there has been no persuasive evidence provided in the record conclusively showing dimensional relationships among the construction and any critical area, buffer and/or buffer setback; and b) the Appellant's unrefuted sworn testimony that a ground floor deck was built as a replacement over a former part of the existing structure removed due to rot and termite damage, and that a bay window and an upper story deck were added, increasing the building footprint by 57 square feet, which the Examiner finds to be a *de minimis* areal expansion at most.
 5. Accordingly, the first component of charge 1 is found to be supported by the evidence in the record, while the second component is not.
 6. Charge 2 is vague on its face, containing so many non-specific alternatives of violation within one charge that it is essentially unenforceable. Nevertheless, Mr. Cousineau has stipulated to conducting clearing within an environmentally critical area or buffer (the proximity to the aforementioned ditch area), but notes that such clearing disturbance was conducted to effect the required removal of the assorted rubbish, salvage and debris that had accumulated on the property and left to innocent purchaser Mr. Cousineau by the previous property owners. The clearing activity was performed by an over-zealous landscaping crew which scraped previously vegetated areas to form a burn pad for burning site debris. Mr. Cousineau was unable to properly supervise such activity as the property owner due to his emergency health problems.
 7. Mr. Cousineau has diligently attempted to remediate the adverse effects of the clearing activity by installing erosion and sedimentation controls such as straw bales, mulch and silt fencing, and has reseeded the bare ground exposed by the clearing activity. He has also agreed in good faith to perform the mitigation measures recommended by his wetlands biologist consultant, including supplemental plantings for habitat restoration and stabilization of the ground.
 8. The preponderance of the evidence submitted into the record does not support the alternative charges in violation charge 2 that grading occurred in excess of 100 cubic yards (which has not been shown) and/or filling in excess of 3 feet in depth (which has not been shown) and/or excavating in excess of 5 feet in depth (which also has not been shown).
 9. The preponderance of the evidence in the record supports a finding that Mr. Cousineau performed the clearing component of the violation charge 2, but the evidence in the record does not support a finding that any of the other components of violation charge 2 occurred.

CONCLUSIONS:

1. Mr. Cousineau stipulates to the basic building permit violation, but the lack of approved sanitary sewage disposal and water occurred under the previous ownership, leaving Mr. Cousineau as an innocent purchaser with an un-permitted onsite sewage disposal system and domestic well, which situation Mr. Cousineau requires time to resolve to gain Health Department approval and then obtain the necessary building permit. DDES has concurred in an extended compliance schedule, given the time necessary for Health Department review and submittal of a complete application. As noted, the evidence in the record does not support a conclusion that the critical areas regulations were violated as a result of the residential construction activity.
2. The clearing component of violation charge 2 of the Notice and Order has been stipulated to, and the Appellant has been diligent and acting in good faith to remediate that violation. The remaining alternative charges contained in violation charge 2 regarding grading violations under several catch-all categories have not been proven by a preponderance of the evidence and are not sustained.
3. As noted above, violation charge 3 has been resolved by compliance with the Notice and Order and shall be dismissed.
4. The appeal shall be sustained with respect to the residential construction within a critical area and with respect to the grading violations, but shall be denied with respect to the residential construction building permit violation and the clearing violation in charges 1 and 2, respectively, except that the deadlines for compliance shall be revised as set forth below.

DECISION:

The appeal is SUSTAINED in part and DENIED in part, as stated in detail in the above Conclusions, with violation charge 3 DISMISSED, except that the Notice and Order deadlines for compliance are revised as stated in the following order.

ORDER:

1. Apply for and obtain the required building permit(s), inspections and approvals for the residential addition construction activity, with a complete application to be submitted *by no later than March 30, 2007*. Meet all deadlines for requested information associated with the permit and pick up the permit within the required deadlines. The Department of Development and Environmental Services (DDES) may in its sole discretion extend such deadline in writing based upon delays in Health Department approval of the onsite sewage disposal system and/or domestic well, if such delays are beyond the control of the Appellant. Alternatively, the un-permitted construction work may be removed from the structure and demolished by such deadline, with all demolition debris disposed of in an approved facility and any necessary demolition permit having been obtained prior to the demolition work.
2. Apply for and obtain a clearing permit, with a complete application submitted *by no later than February 28, 2007*. The application shall include a sensitive areas restoration plan as specified by county code and applicable administrative regulations, which shall contain the agreed-upon mitigation measures recommended by the Appellant's wetlands biologist consultant, including supplemental plantings for habitat restoration and stabilization of the ground. Any erosion, sedimentation and drainage control measures required by DDES which have not already been installed shall be implemented immediately.

3. No penalties shall be assessed against Robert Cousineau and/or the property if the deadlines stated within the above conditions are met. If any of the deadlines is not met, DDES may impose penalties against Mr. Cousineau and/or the property retroactive to the date of this order.

ORDERED December 26, 2006.

Peter T. Donahue
King County Hearing Examiner

TRANSMITTED December 26, 2006 via certified mail to the following:

Robert D. Cousineau
102 E Street SE
Auburn, WA 98002

Charles Horner
Attorney at Law
1001 – 4th Ave., #3200
Seattle, WA 98154

TRANSMITTED December 26, 2006, to the following parties and interested persons of record:

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NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE OCTOBER 2, 2006, PUBLIC HEARING ON DEPARTMENT OF
DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0600044.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Holly Sawin, representing the Department; Charles Horner, representing the Appellant, Robert Cousineau, the Appellant and Douglas Gresham.

The following Exhibits were offered and entered into the record:

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|----------------|---|
| Exhibit No. 1 | DDES staff report to the Hearing Examiner |
| Exhibit No. 2 | Copy of the Notice & Order issued July 26, 2006 |
| Exhibit No. 3 | Copy of the Appeal Statement received August 21, 2006 |
| Exhibit No. 4 | Copies of codes cited in the Notice & Order |
| Exhibit No. 5a | Site plan and approximate photo locations |
| 5b | 3 photographs |
| 5c | King County 2002 GIS aerial photographs |
| Exhibit No. 6 | King County historic Assessor's record |
| Exhibit No. 7 | Mr. Cousineau's agreement to purchase and sale agreement for the property |
| Exhibit No. 8 | Photograph showing the house in the back with the deck |
| Exhibit No. 9 | Receipts from King County Solid Waste |
| Exhibit No. 10 | 4 photographs showing the different dump sites |
| Exhibit No. 11 | Report from Douglas Gresham of Otak dated September 27, 2006 |
| Exhibit No. 12 | Forest Practice Activity Map |
| Exhibit No. 13 | Photograph of area cleared of debris |

PTD:gao

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